

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2005

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THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION No.3275 OF 1998

S.B. Andal

.. Petitioner

Vs.

1. The Chief Educational Officer,  
Salem.
  2. The District Educational Officer,  
Salem.
  3. The Assistant Director,  
District Employment Office,  
Salem.
  4. Sri. Sarada Vidyalaya Higher  
Secondary School for Girls,  
Rep. by its Correspondent  
Yatiswari Guhapriya,  
Saradha College, Salem 16.
- .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus to call for the entire records in Ka.Kaa.A.No.21601/96 dated 10.1.97, 18.2.1997 and 14.3.97 from the file of the third respondent and the proceedings in O.Mu.NO.1095/B4/97 dated 28.1.97 from the file of the first respondent, all of which direct the termination of the petitioner and the consequential proceedings in R.O.C.No.5891/97/B4 dated 23.12.1997 from the first respondent directing stoppage of payment of salary of petitioner, quash the same and forbear the respondents from terminating the services of the petitioner from the post of Junior Assistant in the 4<sup>th</sup> respondent institution.

For Petitioner : Mr.D. Shivakumar

For Respondents 1-3 : Mr. Sanjay Ramaswami  
Govt. Advocate

For Respondent-4 : No Appearance

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## O R D E R

The petitioner has prayed for calling for the records in Ka.Kaa.A.No.21601/96 dated 10.1.97, 18.2.1997 and 14.3.1997 from the file of the third respondent and proceedings in R.O.C.No.5891/97/B4 dated 23.12.1997 from the file of the first respondent directing stoppage of payment of salary of the petitioner and to quash the same, and for a further direction restraining the respondents from terminating the services of the petitioner.

2. The petitioner had applied for employment in the fourth respondent institution and was appointed as Junior Assistant on 22.1.1996. Before appointing the petitioner, fourth respondent Institution on two previous occasions called for candidates from the Employment Exchange and after interview, the candidates sponsored by the Employment Exchange on those two occasions were found unsuitable. Subsequently also the Institution called for a list from the Employment Exchange for the third time. However, since no such list had been furnished within the stipulation period, the application of the present petitioner, even though she was not sponsored by the Employment Exchange, was considered and after interview, she was selected and appointed. Such appointment was approved by the District Educational Officer by Proceedings ROC.No.181/95-96 dated 13.9.1996, subject to the condition that she should pass typewriting examination Higher Grade within one year. Subsequently, the Chief Educational Officer by Proceedings in R.O.C.No.5891/97 dated 23.12.1997 directed to stop the grant for payment of salary so far as the petitioner is concerned. The authorities had also advised the school to terminate the services of the petitioner. These actions were apparently taken on the ground that the petitioner had not passed the typewriting test as stipulated in the approval and further on the ground that the names furnished by the employment exchange, even though belatedly, had not been considered.

3. So far as the first ground is concerned, it is of course true that the petitioner had not passed the typewriting as stipulated in the condition of approval within a period of

one year. However, admittedly the petitioner passed such examination in January, 1998. The time fixed for passing the typewriting examination, in the facts and circumstances of the case, must be considered to be directory in nature and since the petitioner admittedly passed such examination within a few months after the stipulated period, the matter has to be considered rather sympathetically. Since the Management did not have any objection for the continuation of the petitioner and before any formal order of termination had been passed she had already passed the examination, there cannot be any objection for further continuance of the petitioner.

4. So far as the other ground is concerned, it is of course true that by the time the petitioner has been appointed, other names had been sponsored by the employment exchange. However, since the employment exchange had not furnished the names within the stipulated period, the third respondent, namely, the District Employment Officer, need not have written to the authorities to terminate the services of the petitioner. It is also to be noticed that on two earlier occasions the candidates sponsored by the employment exchange were found unsuitable. On the third occasion, the employment exchange itself had delayed the matter and not sponsored the names within the stipulated period and it cannot be expected that the Management would wait indefinitely. Moreover, the appropriate education authority had approved the appointment of the petitioner taking into consideration the facts and circumstances of the case and the petitioner had continued in service and had been paid salary by the Government and it was most inappropriate on the part of the authorities, namely, the respondents 1 and 3, to insist that the services of the petitioner should be terminated.

5. For the aforesaid reasons, the writ petition is allowed and the direction issued by the respondents 1 and 3 under the impugned proceedings are quashed. It appears that certain amounts have been paid during pendency of the writ petition. Balance amount payable to the petitioner should be calculated and necessary steps should be taken for making payment within a period of four months from the date of receipt of the order. There would be no order as to costs.

Sd/

Asst.Registrar

/true copy/

Sub Asst.Registrar

dpk

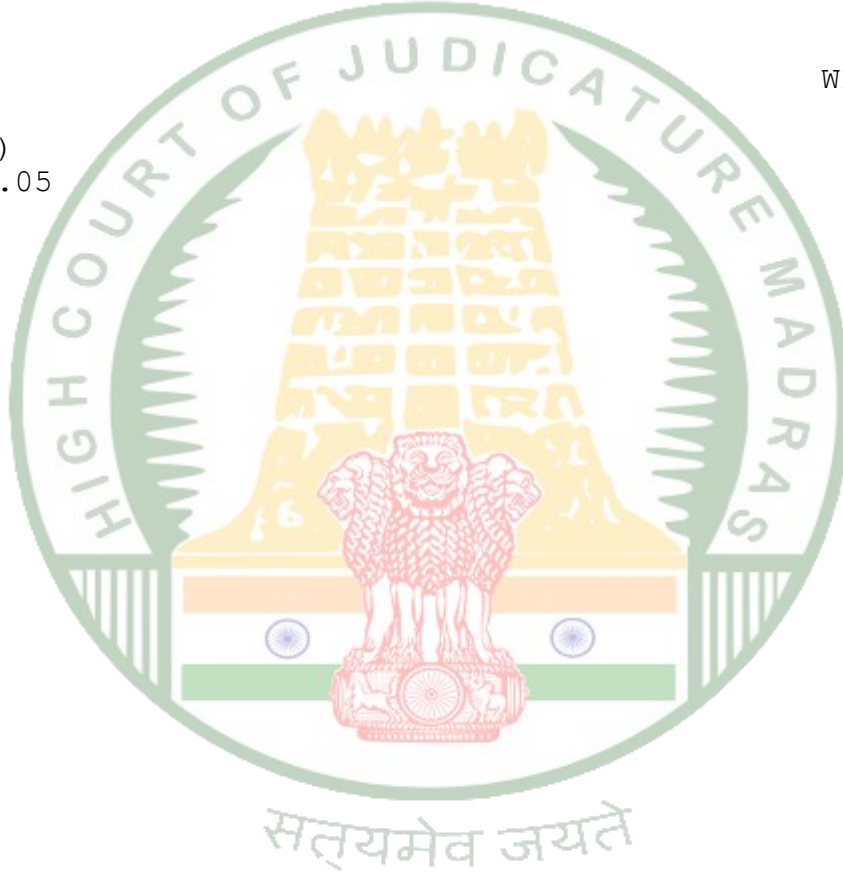
To

1. The Chief Educational Officer, Salem.
2. The District Educational Officer, Salem.
3. The Assistant Director,  
District Employment Office,  
Salem.

1 cc to Mr. D. Shivakumar, Advocate, SR. 4043

WP.NO.3275/1998

KSJ (CO)  
kk 18.2.05



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